

**DECISION**



12654 J. Carter  
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**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

*[Protest of Bid Rejection as Nonresponsive]*

FILE: B-196138

DATE: January 28, 1980

MATTER OF: McHenry Cooke

**DIGEST:**

Rejection of bid as nonresponsive for failure to acknowledge amendment incorporating new wage determination was proper where acknowledgement was sent prior to bid opening, but was not received by agency until after bid opening, and paramount cause of delay was time taken by protester for consideration of wage determination involving only two classes of employees.

Mr. McHenry Cooke has protested the rejection of his bid for refuse hauling services at Fort Irwin, California. For the reasons stated below, the protest is denied. *DL603822*

There is substantial agreement concerning the facts. A solicitation for these services was issued on August 10, 1979, with bid opening scheduled for September 10, at 1:00 p.m. On September 4, the contracting officer received a new wage determination which was incorporated in an amendment to the solicitation issued the same day. The amendment extended bid opening until 1:00 p.m. on September 14. Bidders were required to acknowledge the amendment. Mr. Cooke's acknowledgement was sent prior to bid opening but was not received by the procuring activity until after the scheduled bid opening. Mr. Cooke's bid was rejected as nonresponsive.

Mr. Cooke contends that the rejection of his bid was improper and asks that it be reinstated and the contract awarded to him as the low bidder. Mr. Cooke suggests that the agency's late issuance of the amendment denied him sufficient time to consider the new wage rates and timely submit his acknowledgement and

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that he should not be penalized therefor. Alternatively, Mr. Cooke contends that his late acknowledgement falls within the category of "a late modification of an otherwise successful bid which makes its terms more favorable to the Government," consideration of which is permitted by the terms of the solicitation. We believe the rejection of Mr. Cooke's bid was proper.

The failure of a bidder to acknowledge an amendment incorporating a wage rate determination in the solicitation renders the bid nonresponsive even if the bidder is already paying wages greater than those found in the amendment. See Kuckenbert-Arenz, B-184169, July 30, 1975, 75-2 CPD 67, and cases cited therein. The reason for this rule is that a bidder who fails to indicate by acknowledgement of the amendment or otherwise that he has considered the wage schedule could not, without his consent, be required to pay the wage rates prescribed therein, notwithstanding that he might already be paying the same or higher rates to his employees under agreements with labor unions or other arrangements.


Our cases clearly establish that the onus is upon the bidder to comply exactly with the bid opening time requirement in the solicitation, Aqua-Trol Corporation, B-191648, July 14, 1978, 78-2 CPD 41; 52 Comp. Gen. 281 (1972), although we have made exceptions to this rule where the lateness was attributable to improper action by the Government. In this case, Mr. Cooke concedes that although aware of the short time for acknowledgement, he delayed his response for 2 days to consider the impact of a wage determination which contained only two classes of employees. We believe that the amendment was issued a sufficient time before the extended bid opening date and it was Mr. Cooke's delay that was the paramount cause of the lateness of his acknowledgement rather than any action by the agency. Consequently, the agency was correct in regarding Mr. Cooke's amendment as late. Sound Refining, Inc., B-193863, May 3, 1979, 79-1 CPD 308.

Lastly, we note that the "late modification of an otherwise successful bid" provision applies only to bids already determined to be responsive.

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The protest is denied.

A handwritten signature in cursive script, reading "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name.

For The Comptroller General  
of the United States